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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)
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Filing Date: March 15, 2023) Case No.: PSH-23-0066
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Issued: May 24, 2023

Administrative Judge Decision

Phillip Harmonick, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy’s (DOE) regulations, set forth at 10 C.F.R. Part 710, “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual should not be granted access authorization.

I. BACKGROUND

On May 10, 2022, the Individual signed and submitted a Questionnaire for National Security Positions (QNSP) in connection with seeking access authorization. Exhibit (Ex.) 3 at 45.² The Individual disclosed on the QNSP that in 2015, while pursuing undergraduate studies at a university, he had used marijuana and LSD, and he had been arrested for several offenses while under the influence of LSD in a university dormitory. *Id.* at 43–48. The Individual further disclosed that he had been ordered to consult with a mental health professional in 2017 while studying at the university because “some students were uncomfortable with [his] demeanor and words.” *Id.* at 30. He also indicated that he was hospitalized for a mental health condition in 2019 due to behaving in an “incoherent” manner while mourning the death of his dog. *Id.* at 31.

¹ The regulations define access authorization as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

² The internal pagination of numerous exhibits offered by the local security office does not correspond to the number of pages included in the exhibits. For example, the pagination of Ex. 3 begins at 10 due to omitted pages. This Decision cites to pages in the order in which they appear in exhibits without regard for their internal pagination.

However, the Individual checked a box marked “no” in response to a question on the QNSP concerning whether he had ever been diagnosed with any of a list of mental health conditions, including bipolar mood disorder. *Id.* at 32.

The Individual also disclosed on the QNSP that he had been fired from a job in 2020 because his “priorities did not align with management’s priorities.” *Id.* at 16. He additionally indicated that he had been denied a security clearance by the United States Navy (Navy) in 2016 because he failed to disclose his 2015 arrest and drug use which were discovered during an investigation into his eligibility for a security clearance. *Id.* at 40.

The Individual was interviewed by an investigator (Investigator) on June 24, 2022, as part of a background investigation into his eligibility for access authorization. Ex. 5 at 1. During the interview, the Individual indicated that his 2020 termination from a job resulted from “raising his voice” at a supervisor who the Individual perceived to be disrespectful and abrupt. *Id.* at 2. During the interview the Individual denied ever having been diagnosed with any of a list of psychological conditions, including bipolar disorder. *Id.* at 3.

The local security office (LSO) subsequently issued the Individual a letter of interrogatory (LOI) seeking information related to his 2017 consultation with a mental health professional and hospitalization in 2019. Ex. 6 at 1. In his response, the Individual indicated that he had been diagnosed with bipolar disorder in 2017 and was not receiving treatment for that condition. Ex. 7 at 6.

On October 17, 2022, the Individual met with a DOE-contracted psychologist (DOE Psychologist) for a psychological evaluation. Ex. 8 at 1. The DOE Psychologist conducted a clinical interview of the Individual and administered psychological tests. *Id.* at 1, 5. On October 31, 2022, the DOE Psychologist issued a report of the evaluation (Report) in which he opined that the Individual met sufficient diagnostic criteria for a diagnosis of Unspecified Bipolar Disorder, Moderate, In Full Remission, that the Individual’s responses on one of the psychological tests suggested “the possibility of underreporting symptoms,” and that the Individual’s Bipolar Disorder could impair his judgment, stability, reliability, or trustworthiness. *Id.* at 5–7.

The LSO issued the Individual a letter notifying him that it possessed reliable information that created substantial doubt regarding his eligibility for access authorization. Ex. 1. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) and Guideline I (Psychological Conditions) of the Adjudicative Guidelines. Ex. 2.

The Individual exercised his right to request an administrative review hearing pursuant to 10 C.F.R. Part 710. The Director of the Office of Hearings and Appeals (OHA) appointed me as the Administrative Judge in this matter, and I subsequently conducted an administrative hearing. The LSO submitted eight exhibits (Exs. 1–8). The Individual submitted ten exhibits (Exs. A–J). The Individual testified on his own behalf. Hearing Transcript (Tr.) at 8–9. The LSO offered the testimony of the DOE Psychologist. *Id.* at 102.

II. THE NOTIFICATION LETTER AND THE ASSOCIATED SECURITY CONCERNS

The LSO cited Guideline E (Personal Conduct) of the Adjudicative Guidelines as the first matter of significant concern regarding the Individual's eligibility for access authorization. Ex. 2 at 3–5. “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” Adjudicative Guidelines at ¶ 15. The SSC cited the Individual's: 2015 arrest following bizarre behavior while under the influence of LSD, failure to disclose his illegal drug use and 2015 arrest while seeking a Navy security clearance, incoherent behavior and hospitalization following the death of his dog in 2019, altercation with a supervisor and subsequent termination from a job in 2020, failure to disclose his diagnosis with Bipolar Disorder on the QNSP or during the interview with the Investigator, and responses on the psychological testing which led the DOE Psychologist to infer that the Individual might be underreporting his symptoms. Ex. 2 at 3–5. The LSO's allegations that the Individual deliberately failed to disclose his Bipolar Disorder on the QNSP or to the Investigator, omitted derogatory information he was required to disclose when seeking a security clearance from the Navy, and repeatedly engaged in disruptive or inappropriate behavior justify its invocation of Guideline E.³ Adjudicative Guidelines at ¶ 16(a)–(b), (d).

The LSO cited Guideline I (Psychological Conditions) as the other matter of significant concern regarding the Individual's eligibility for access authorization. Ex. 2 at 1–3. “Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline.” Adjudicative Guidelines at ¶ 27. The SSC cited: the Individual's 2017 diagnosis with Bipolar Disorder; the DOE Psychologist's opinion that the Individual met sufficient diagnostic criteria for a diagnosis of Unspecified Bipolar Disorder, Moderate, in Full Remission; the Individual's failure to comply with treatment recommendations following his 2017 diagnosis with Bipolar Disorder; and the Individual's behavior leading to his referral to a mental health professional while attending a university.⁴ Ex. 2 at 1–3. The LSO's allegations that the Individual engaged in behavior that casts doubt on his judgment, stability, reliability, or trustworthiness, the opinions of the DOE Psychologist and other clinicians that the Individual has a psychological condition that could impair his judgment, stability, reliability, or trustworthiness, the Individual's hospitalization for mental health treatment, and the Individual's alleged failure to follow treatment recommendations justify the LSO's invocation of Guideline I. Adjudicative Guidelines at ¶ 28(a)–(d).

III. REGULATORY STANDARDS

³ For reasons described below, I find that the Individual's responses on the psychological testing do not raise security concerns under Guideline E. *Infra* p. 9 n.11.

⁴ The LSO raised the Individual's behavior following the death of his dog in 2019 and workplace confrontation that led to his termination in 2020 under both Guideline E and Guideline I. As explained below, I find that these allegations are properly raised under Guideline E and not Guideline I. *Infra* p. 12 n.12.

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

An individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). An individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* at § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. FINDINGS OF FACT

While attending a university for undergraduate studies in 2015, the Individual smoked marijuana. Ex. 3 at 34. In February 2015, the Individual purchased and used LSD. *Id.*; *see also* Tr. at 12–13 (indicating that he had intended to purchase hallucinogenic mushrooms, but purchased LSD when he learned that the hallucinogenic mushrooms were not available). While under the influence of LSD in a university dormitory, the Individual experienced "what felt like being in the Garden of Eden" and "decided to take [his] clothes off as though [he] was Adam from Genesis." Ex. 3 at 34–35. A student summoned law enforcement because the Individual was "wandering the hallways in the nude." *Id.* at 35. The Individual was charged with four misdemeanor offenses in connection with the incident, all of which were dropped by the prosecuting agency after the Individual agreed to participate in a drug education program. *Id.* at 35–37; Tr. at 16–17.

In 2016, the Individual sought to enter a Navy program that required a security clearance. Ex. 3 at 40. On the advice of a relative who had previously served in a branch of the U.S. military, the Individual did not disclose his prior drug use and 2015 arrest to the Navy in connection with seeking a security clearance. *Id.*; Ex. B at 1; Tr. at 19–20. A background investigation of the Individual revealed the derogatory information, and the Navy denied the Individual a security clearance based on his omissions. Ex. 3 at 40.

In March 2017, during his senior year at the university, the Individual shouted at another student who he perceived to have greeted him in a derogatory manner and "storm[ed] out of the classroom." Ex. 5 at 2; Tr. at 22–25 (indicating that the Individual felt "pessimistic" and was "harboring [] ill feelings" towards others based on his lack of employment prospects post-

graduation and feelings evoked by his Africana Studies class). As a result of complaints concerning the Individual's behavior in the classroom, a disciplinary body within the university directed the Individual to undergo a mental health evaluation and treatment. Tr. at 26–29; *see also* Ex. 5 at 2–3; Ex. 7 at 6 (indicating that the Individual's mother arranged for him to enter an inpatient treatment program). The Individual received inpatient treatment for three days. Ex. 7 at 6. During intake to the inpatient treatment, the Individual's mother and aunt reported that the Individual had been “agitated” and the Individual reported racing thoughts, elevated mood, and sleeping only three to four hours per night. *Id.* at 10. The clinicians treating the Individual characterized his presentation as “hypomanic and delusional.” *Id.*

A clinician at the inpatient treatment center diagnosed the Individual with Bipolar Disorder, Unspecified, with Psychotic Symptoms,⁵ and Cannabis Dependence, in Remission.⁶ *Id.* at 16–17. Clinicians at the inpatient treatment center recommended that he receive outpatient services, including medication management, therapy, and case management, four to eight times monthly. *Id.* at 11.

During outpatient meetings with counselors in the Spring of 2017, the Individual reported that a long-term financial goal of his was to be “a billionaire and philanthropist,” that he felt “super healthy [] and [] can literally do anything and [] be okay . . . like [he] could run a world record if [he] trained,” and that he no longer needed to use marijuana because he felt “high everyday [] now, which is so different than before.” *Id.* at 12, 29. The Individual also reported believing that he had a “special ability” and that he had “to be careful about what I think and what I say, because things happen that I think about and I think that I can make things happen, and sometimes I feel like people can hear my thoughts.” *Id.* at 20. He also indicated believing that he “can talk to birds and dogs, and make them do things and I can make people do things”⁷ *Id.* at 27. The Individual was recommended to take medication to control the symptoms of Bipolar Disorder, including racing and tangential thoughts, but did not do so.⁸ Tr. at 72–75, 79.

⁵ At the hearing, the Individual represented that the clinicians told him that “they had cause to believe [] and have facts possibly that I was bipolar, and they discussed it with me, but . . . [t]here was never any official diagnosis that I was given.” Tr. at 29–30.

⁶ The Individual reported to a clinician on April 11, 2017, that he had not used marijuana for three to four weeks. Ex. 7 at 25.

⁷ The Individual represented at the hearing that he did not literally believe that he could control the behavior of animals, and that the counselors with whom he spoke had misinterpreted his attempts to communicate his self-perceived distance from other people through “metaphors/allegories.” Ex. B at 2; Tr. at 80–81. However, he also acknowledged that his perception of events he observed was currently different from how it was in 2017 when he “tried to create so many connections out of things that were either coincidental or based on prediction.” Tr. at 82. I find it more probable that the Individual was communicating a literal belief to the clinicians that he could control animals than that he was using metaphors to communicate his isolation. The Individual's claim to have the ability to speak with and control animals was part of a pattern of grandiose claims of special abilities that he made during outpatient treatment. Moreover, rather than expressing distance from other people akin to animals, the Individual repeatedly purported to have special abilities to communicate with and control other people consistent with his apparent belief that he could control animals.

⁸ At the hearing, the Individual represented that he was told that he was recommended medication to treat “symptoms that are related to Bipolar Disorder” but denied that he was ever “officially” told that he had Bipolar Disorder. Tr. at 71–75.

Upon graduation from the university, the Individual was unemployed and returned home to live with his parents. *Id.* at 30–31. The Individual was administratively terminated from outpatient treatment in May 2017 after he graduated and discontinued attending scheduled treatment sessions. Ex. 7 at 22–23; *see also* Ex. G (establishing that the Individual graduated from the university in May 2017); *but see* Tr. at 31–32 (reflecting the Individual’s testimony that he notified the outpatient treatment center of his plans to return home after graduation). He did not seek treatment upon returning home to live with his parents because he perceived that his parents “know how [he] think[s]” and they provided the support that he felt that he needed. Tr. at 32–33.

In March 2019, the Individual’s dog that he had owned since childhood died. Ex. 3 at 31. On May 25, 2019, a neighbor of the Individual summoned law enforcement officers because the Individual was banging on his door. *Id.* at 30–31; Ex. 7 at 33. The law enforcement officers who responded to the call observed the Individual “walking in the middle of the roadway and yelling.” Ex. 7 at 33. They perceived that the Individual was “incoherent,” “sweating profusely[,] and repeating himself.” *Id.* The Individual was transported to a hospital where he was diagnosed with acute delirium, acute kidney injury, and Rhabdomyolysis.⁹ *Id.* at 34. The Individual attributed this incident to “the trauma of losing [his] dog” Ex. 3 at 33.

In January 2020, the Individual raised his voice to his workplace supervisor when expressing disagreement with direction provided to him by the supervisor. Ex. 5 at 2. The Individual was placed on a 90-day performance improvement plan with three objectives: (1) “communicate and behave professionally with [his] coworkers;” (2) improve efficiency in one of his work tasks; and (3) “understand company system” to lead projects. Ex. 3 at 17. At the end of the 90-day period, the Individual’s employer determined that he had not met the first or third objectives and terminated his employment. *Id.* at 16–17.

A DOE contractor hired the Individual in October 2020. *Id.* at 13. On May 10, 2022, the Individual completed the QNSP and certified that the information provided therein was “true, complete, and correct to the best of [his] knowledge and belief and [was] made in good faith.” *Id.* at 45. The Individual checked a box marked “no” in response to a question on the QNSP concerning whether he had ever been diagnosed with any of a list of psychological conditions, including “bipolar mood disorder.” *Id.* at 32. The Individual also represented on the QNSP that he was referred for a mental health evaluation in 2017 to “see if [he] had bipolar disorder” and that he “was not determined bipolar.” *Id.* at 30. The Individual further represented that he “fully complied with the attendance” [sic] following his discharge from inpatient treatment. *Id.*

⁹ According to documentation provided to the Individual by the hospital, Rhabdomyolysis is a condition that occurs when “muscle cells break down and release substances into the blood that can damage the kidneys.” Ex. 7 at 35. The documentation further indicated that muscle damage responsible for the condition is often caused by “extreme overuse of the muscles,” injury, “use of illegal drugs, especially cocaine,” and “alcohol abuse.” *Id.* The Individual represented on the QNSP that he “was not under the influence of any drugs” at the time of the incident. Ex. 3 at 31. However, laboratory testing conducted by the hospital which might have confirmed the Individual’s assertion was not provided by the Individual in his response to the LOI. *See* Ex. 7 at 38–40 (listing laboratory tests performed on the Individual). The Individual attributed his Rhabdomyolysis to “[g]oing on a fast walk and then . . . in spurts[] try[ing] to run as fast as [he could] . . . to the point that [he] could kind of forget [his dog’s death].” Tr. at 87.

The Investigator interviewed the Individual on June 24, 2022. Ex. 5 at 1. The Individual told the Investigator that he had not been diagnosed with any “personality or psychological disorder” through his 2017 mental health evaluation and treatment. *Id.* at 2. The Individual specifically denied having been diagnosed with “bipolar mood disorder.” *Id.*

On August 11, 2022, the Individual submitted his response to the LOI. Ex. 7 at 1. In his response to the LOI, the Individual provided documentation concerning his prior mental health treatment and indicated that he had been diagnosed with Bipolar Disorder in 2017. *Id.* at 6. He also indicated that he had sought inpatient treatment in 2017, after having been “referred” by his mother, and that the symptoms that led to his treatment were “[d]elusional thoughts, racing thoughts, decreased sleep[,] and elevated mood.” *Id.*

The Individual met with the DOE Psychologist for an evaluation on October 17, 2022. Ex. 8 at 1. During the clinical interview, the Individual denied having experienced a hypomanic or manic episode since 2017 and denied experiencing any significant psychological symptoms as of the date of the clinical interview. *Id.* at 4. The DOE Psychologist administered psychological tests to the Individual, including a Mood Disorder Questionnaire (MDQ) and the Minnesota Multiphasic Personality Inventory-3 (MMPI-3). *Id.* at 5. The Individual endorsed having experienced nine of thirteen symptoms of Bipolar Disorder on the MDQ, including having experienced several at the same time and having experienced moderate or severe problems due to the symptoms, which the DOE Psychologist interpreted as suggestive of Bipolar Disorder. *Id.* The Individual produced a valid response to the MMPI-3 with no clinically significant elevations. Tr. at 134. However, based on the Individual’s higher than average endorsement of possessing uncommon virtues, the DOE Psychologist inferred that he could be underreporting symptoms. *Id.* at 134–35; Ex. 8 at 5.

On October 31, 2022, the DOE Psychologist issued his Report. *Id.* at 7. In the Report, the DOE Psychologist concluded that the Individual met sufficient diagnostic criteria for a diagnosis of Unspecified Bipolar Disorder, Moderate, in Full Remission. *Id.* at 6. The DOE Psychologist indicated that Bipolar Disorder is a lifelong condition, and that manic or hypomanic episodes recur in approximately eighty percent of persons with the condition. *Id.* The DOE Psychologist indicated that the Individual’s judgment and reliability would be significantly impaired during such an episode. *Id.* The DOE Psychologist recommended that the Individual could mitigate the risks of such an episode by undergoing treatment, including medication to stabilize his mood and consulting with a mental health provider to “develop skills to monitor his mood and engage in healthy stress management coping skills.” *Id.*

On March 11, 2023, the Individual met with a psychologist (Individual’s Psychologist) for an intake session. Ex. I at 1. The Individual participated in four treatment sessions with the Individual’s Psychologist from March 18, 2023, to April 7, 2023. *Id.* The Individual’s sessions with the Individual’s Psychologist “related to describing his history of mental health symptoms, his feelings about the findings of the security clearance evaluation, current stressors, and psychoeducation regarding symptoms of a bipolar disorder.” *Id.* The Individual’s Psychologist, planned future treatment sessions to help the Individual “develop[] skills necessary for monitoring his mood, learn[] stress management techniques, [] develop[] coping strategies[,]

identify[] early warning signs that a manic or depressive episode may be eminent [sic], and how to respond to this situation.” *Id.*

The Individual’s Psychologist issued the findings of a psychological evaluation (Findings) of the Individual on April 15, 2023. Ex. J. For the psychological evaluation, the Individual’s Psychologist reviewed documents from the administrative review of the Individual’s eligibility for access authorization, conducted clinical interviews of the Individual, and administered two psychological tests – the Millon Clinical Multiaxial Inventory, Fourth Edition (MCMI-IV) and MMPI-3 – to him over several days. *Id.* at 1, 5–6. In his Findings, the Individual’s Psychologist concluded that the Individual “requires treatment to minimize risk, reduce likelihood of a future emotional/behavioral episode triggered by stress, and to improve confidence in his judgment, reliability, stability, and trustworthiness” *Id.* at 18. The Individual’s Psychologist recommended that Individual undergo therapy for Bipolar Disorder, consult with a psychiatrist to determine whether to begin treatment with medication, and consult with his primary care physician for potential physiological causes of his prior symptoms. *Id.* at 19.

Although the Individual’s Psychologist determined that the Individual should undergo treatment for Bipolar Disorder, he expressed “concerns about the accuracy and validity of this diagnosis.” Ex. I at 2. The Individual’s Psychologist indicated that it was unclear from the documentation of the Individual’s 2017 inpatient treatment what actions, if any, the clinicians who diagnosed the Individual with Bipolar Disorder took to rule out potential physiological causes of the Individual’s symptoms. Ex. J at 15. Furthermore, the Individual’s Psychologist asserted “that research has shown [cultural factors] lead[] to diagnostic and treatment disparities (Akinhanmi, Biernacka, Strakowski, et. al, 2018) in African American males” such as the Individual and that there was no evidence that the clinicians had taken into account biases that might have affected the Individual’s diagnosis.¹⁰ *Id.* The Individual’s Psychologist also represented that “[s]ome symptoms of bipolar disorder can be subject to high false positive rates” and that “[a]n unmedicated individual with an accurate diagnosis of bipolar disorder would likely have displayed a recurrent manic and/or depressive episode in the past 5-6 years” but that the Individual had not. Ex. I at 2.

The Individual testified at the hearing that he has not used any illegal drugs since he smoked marijuana in 2017 and does not intend to use illegal substances in the future. Tr. at 17–18. He does not believe that he is currently diagnosed with any mental health condition. *Id.* at 33. The Individual currently sees the Individual’s Psychologist on a weekly basis. *Id.* at 56. He finds the family focused therapy employed by the Individual’s Psychologist, in which the Individual’s parents and girlfriend act as a support system by identifying out of character behaviors and helping the Individual to observe potential signs of a mood episode that he has not noticed, to be helpful to him. *Id.* at 57–58. The Individual intends to continue treatment with the Individual’s Psychologist and to comply with his recommendations. *Id.* at 60–61.

¹⁰ Notably, the research cited by the Individual’s Psychologist as evidence of racial disparities in treatment of Black patients found evidence of *underdiagnosis* of Bipolar Disorder among Black persons. Ex. J at 15 (citing Margaret Akinhanmi *et al*, *Racial Disparities in Bipolar Disorder Treatment and Research: A Call to Action*, 20(6) BIPOLAR DISORDER at 506–14 (2018), available at ncbi.nlm.nih.gov/pmc/articles/PMC6175457/ (concluding that “[p]ublished data show that bipolar persons of African ancestry, compared with bipolar persons of non-African ancestry, are more often diagnosed with a disease other than bipolar disorder”)).

The DOE Psychologist testified that Bipolar Disorder is a lifelong condition and that symptoms can reoccur even with treatment. *Id.* at 112. The DOE Psychologist noted that research described in the *DSM-5* indicates that more than 90% of persons with Bipolar Disorder who experience a manic episode will experience another mood episode in their lives. *Id.* at 113; AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 130 (5th ed. 2013). The DOE Psychologist opined that the Individual's Psychologist's treatment is consistent with best practices for behavioral treatment, but it should be combined with medication. Tr. at 129–30. The DOE Psychologist indicated that he would not make any changes to the opinion he expressed in his Report based on the information provided at the hearing. *Id.* at 122, 128–29.

The DOE Psychologist testified that marijuana use could cause symptoms consistent with those of Bipolar Disorder, but a person would have to be in “an acute phase of intoxication” from marijuana for this to be the case. *Id.* at 131–32. Thus, the DOE Psychologist opined that the symptoms of Bipolar Disorder observed by the clinicians in 2017 could not be attributable to marijuana use if the Individual had not used marijuana for weeks prior to reporting the symptoms. *Id.*

V. ANALYSIS

A. Guideline E

The LSO's allegations that the Individual deliberately failed to disclose his Bipolar Disorder on the QNSP or to the Investigator, omitted derogatory information he was required to disclose when seeking a security clearance from the Navy, and repeatedly engaged in disruptive or inappropriate behavior justify its invocation of Guideline E.¹¹ Adjudicative Guidelines at ¶ 16(a)–(b), (d). Conditions that could mitigate security concerns under Guideline E include:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to

¹¹ The SSC also cited as a security concern under Guideline E the DOE Psychologist's opinion that the Individual's responses to the MMPI-3 “suggested the possibility of underreporting symptoms.” Ex. 2 at 4. However, the DOE Psychologist testified at the hearing that the Individual's responses produced a valid test result which was less than one standard deviation greater than the mean for all respondents to the MMPI-3. *Supra* p. 7. The mere fact that the Individual presented himself as more virtuous than the average person in his responses to the MMPI-3, absent more extreme representations of virtuosity that would invalidate the results of the MMPI-3 or corroborating evidence from another aspect of the psychological evaluation, is insufficient to establish that the Individual “deliberately provid[ed] false or misleading information; or conceal[ed] or omit[ed] information, concerning relevant facts to a[] . . . mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.” Adjudicative Guidelines at ¶ 16(b). Therefore, I find that this allegation by the LSO does not, in of itself, raise a security concern under Guideline E.

- cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
 - (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
 - (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
 - (f) the information was unsubstantiated or from a source of questionable reliability; and,
 - (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Adjudicative Guidelines at ¶ 17.

I find the Individual's claims to have been unaware of his diagnosis with Bipolar Disorder when he completed the QNSP and was interviewed by the Investigator implausible. In light of the Individual's admissions to having been aware that he was assessed for Bipolar Disorder in 2017, told that his symptoms were consistent with those of Bipolar Disorder, and recommended to receive medication and therapy for those symptoms, I find it more likely that he was aware of his diagnosis when he completed the QNSP and was interviewed by the Investigator, and he subsequently denied knowledge of his diagnosis to minimize his responsibility for his failure to disclose a diagnosis that could have impacted his eligibility for access authorization.

The Individual's failures to disclose his arrest and illegal drug use to the Navy and Bipolar Disorder to DOE were both discovered by background investigations into his eligibility for access authorization, and thus the Individual did not make prompt, good-faith efforts to disclose the omissions. Moreover, the Individual has attributed responsibility for his lack of candor to the Navy to uncorroborated claims of advice from a relative not to disclose the information and his failure to disclose his Bipolar Disorder to DOE to implausible claims of not having known of the diagnosis. In light of the Individual's repeated failure to behave in a trustworthy manner when seeking access authorization, to learn from his omission to the Navy, or to fully accept responsibility for his actions, I cannot find that the conduct is unlikely to reoccur. Thus, I find that the first mitigating condition under Guideline E is inapplicable in this case. *Id.* at ¶ 17(a); *see also* 10 C.F.R. § 710.7(c) (identifying relevant considerations in applying the Adjudicative Guidelines).

Although the Individual attributed his failure to disclose his arrest and illegal drug use to the Navy to the advice of a relative, there is no indication that the relative had "professional

responsibilities for advising or instructing the individual specifically concerning security processes.” Adjudicative Guidelines at ¶ 17(b). Thus, the second mitigating condition is inapplicable. *Id.*

The Individual’s failure to fully disclose derogatory information in connection with security investigative processes are of “special interest” under the Adjudicative Guidelines because of the security concerns raised by such conduct. *Id.* at ¶ 15. Moreover, the Individual’s omissions concerned topics – criminal conduct and psychological conditions – that could present serious threats to national security if not mitigated. These omissions occurred multiple times, most recently within one year of the date of the hearing, and as noted above I am not convinced that they are unlikely to recur. Thus, I find the third mitigating condition inapplicable to the Individual’s failure to disclose derogatory information to the Navy and DOE as part of security investigative processes. *Id.* at ¶ 17(c).

Cumulatively, the incidents of disruptive and inappropriate conduct cited by the LSO under Guideline E present significantly more concerns as to the Individual’s trustworthiness and reliability than the incidents would have in isolation. While each of the incidents occurred under differing circumstances, taken together they present a pattern of unreliability and poor judgment on the part of the Individual such that I cannot find the third mitigating condition under Guideline E applicable. *Id.*

The fourth mitigating condition is inapplicable because there is no indication that the Individual’s failure to disclose derogatory information during security investigative processes, or the disruptive and inappropriate conduct cited by the LSO, were related to symptoms of the Individual’s Bipolar Disorder or other influences that could be resolved through counseling. *Id.* at ¶ 17(d). The fifth mitigating condition is inapplicable because the LSO did not allege that the Individual’s conduct created a special vulnerability to exploitation, manipulation, or duress. *Id.* at ¶ 17(e). The sixth mitigating condition is inapplicable because the LSO’s allegations did not rely on unsubstantiated information or information from sources of questionable reliability. *Id.* at ¶ 17(f). The LSO did not allege that the Individual associated with persons engaged in criminal conduct, and thus the seventh mitigating condition is inapplicable. *Id.* at ¶ 17(g).

For the reasons indicated above, I find that none of the mitigating conditions under Guideline E are applicable in this case. Accordingly, I find that the Individual has not resolved the security concerns asserted by the LSO under Guideline E.

B. Guideline I

The opinions of the DOE Psychologist and other clinicians that the Individual has a psychological condition that could impair his judgment, stability, reliability, or trustworthiness, the Individual’s hospitalization for mental health treatment, and the Individual’s alleged failure to follow treatment recommendations justify the LSO’s invocation of Guideline I.¹² Adjudicative

¹² The LSO’s allegations concerning the Individual’s alleged irresponsible, impulsive, or bizarre behavior were not properly raised under Guideline I. A subject’s behavior may raise security concerns as a psychological condition under Guideline I only if it is “not covered under any other guideline” Adjudicative Guidelines at ¶ 28(a). As

Guidelines at ¶ 28(b)–(d). Conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) [a] recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government [indicates] that an individual’s previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and,
- (e) there is no indication of a current problem.

Id. at ¶ 29.

Before addressing the applicability of the mitigating conditions under Guideline I, I will first address doubts presented by the Individual’s Psychologist as to the appropriateness of the Individual’s diagnosis. I found the documentation prepared by the clinicians in connection with his 2017 diagnosis with Bipolar Disorder and treatment to be thorough and persuasive. There is nothing to affirmatively suggest that Individual’s Psychologist’s concerns related to misdiagnosis of Black persons by clinicians are present in this case, and the research cited by the Individual’s Psychologist concerning the underdiagnosis of Black individuals with Bipolar Disorder does not support such a conclusion. The DOE Psychologist’s testimony that the Individual’s marijuana use could only have produced symptoms of Bipolar Disorder if the Individual was experiencing the intoxicating effects of marijuana when the psychological symptoms occurred weighs against the potential physiological cause of the symptoms posited by the Individual’s Psychologist because the clinicians who diagnosed the Individual with Bipolar Disorder determined that the Individual’s Cannabis Dependence was in remission. The determination that the Individual’s Cannabis Dependence was in remission strongly indicates that he was not actively using marijuana when he reported symptoms consistent with Bipolar Disorder. The Individual’s Psychologist’s argument that the Individual would have likely experienced a mood episode since 2017 if he truly suffered from Bipolar Disorder is not enough, in of itself, to conclude that the Individual was misdiagnosed. Thus, I find that the Individual has not brought forth sufficient evidence to establish that he was misdiagnosed with Bipolar Disorder.

all of the behaviors cited by the LSO were properly raised under Guideline E, I find that the LSO may not also allege them under Guideline I.

The Individual has yet to consult with a psychiatrist concerning potential use of medication to control his Bipolar Disorder, as recommended by both the DOE Psychologist and the Individual's Psychologist. Moreover, even though the Individual has expressed the intention to do so in the future, I am not convinced that he will consistently adhere to a medication regimen if it is recommended to him in light of his decisions not to use medication recommended to him in 2017 to control the symptoms of his Bipolar Disorder and to discontinue treatment after leaving the university. Thus, I find the first mitigating condition inapplicable. *Id.* at ¶ 29(a).

While the Individual has entered treatment for Bipolar Disorder with the Individual's Psychologist, the DOE Psychologist testified that his opinion was unchanged because this treatment should be combined with medication. I am persuaded by the DOE Psychologist's opinion that, in the absence of an assessment by a psychiatrist and potentially receiving medication, the Individual remains at significant risk of a mood episode that could compromise his judgment, stability, reliability, or trustworthiness. Therefore, the second mitigating condition is inapplicable. *Id.* at ¶ 29(b).

The DOE Psychologist testified convincingly that the Individual is at high risk of reoccurrence of a mood episode triggered by his Bipolar Disorder, particularly in the absence of medication, and cited data from the *DSM-5* supporting his position. Accordingly, I find the third mitigating condition inapplicable. *Id.* at ¶ 29(c).

The fourth mitigating condition is inapplicable because the DOE Psychologist and *DSM-5* indicate that Bipolar Disorder is a lifelong condition. *Id.* at ¶ 29(d). The fifth mitigating condition is inapplicable because the symptoms of the Individual's Bipolar Disorder could reemerge at any time and his previous failure to comply with treatment recommendations for those symptoms creates significant doubt as to whether he will be able to act reliably and exercise the sound judgment required of a clearance holder should those symptoms reemerge. *Id.* at ¶ 29(e).

For the abovementioned reasons, I conclude that the Individual's Bipolar Disorder and noncompliance with prior treatment recommendations could impair his judgment, reliability, and trustworthiness, and none of the mitigating conditions under Guideline I are applicable in this case. Therefore, the Individual has not resolved the security concerns asserted by the LSO under Guideline I.

VI. CONCLUSION

In the above analysis, I found that there was sufficient derogatory information in the possession of DOE to raise security concerns under Guideline E and Guideline I of the Adjudicative Guidelines. After considering all the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Summary of Security Concerns. Accordingly, I have determined that the Individual should not be granted access authorization. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Phillip Harmonick
Administrative Judge
Office of Hearings and Appeals